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**IN THE
COURT OF APPEALS OF INDIANA**

JOSEPH E. CARTER, JR.,
SARAH E. AMMONS,

Appellants-Defendants,

VS.

VALLEY RURAL ELECTRIC COMPANY.

Appellee-Petitioner.

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No. 15A04-0601-CV-15

APPEAL FROM THE DEARBORN CIRCUIT COURT

The Honorable James Humphrey, Judge
The Honorable James B. Morris, Special Judge
Cause No. 15C01-0109-CP-154

October 16, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Joseph Carter and Sarah Ammons appeal the trial court's order denying their request for an extension of time to contest a ruling filed pursuant to Indiana Trial Rule 72(E). We affirm.

Issue

Carter and Ammons raise one issue on appeal: whether the trial court abused its discretion by denying their request for an extension of time.

Facts

Carter and Ammons own a large tract of land adjacent to Valley Rural Electric Company's ("Valley Rural") property located in Dearborn County. On September 17, 2001, Valley Rural filed a complaint and a petition for a temporary restraining order alleging that Carter and Ammons trespassed upon the property and blocked Valley Rural's access to its water tower by parking trucks and equipment and depositing debris in front of its gates. On September 19, 2001, the presiding judge of the Dearborn Circuit Court recused himself, and Judge James B. Morris assumed jurisdiction of the case.

On August 16, 2004, the trial court conducted a bench trial, after which the trial court requested that the parties submit their proposed findings of fact. Following its receipt of those submissions, the trial court entered a judgment permanently enjoining Carter and Ammons from blocking the gate to Valley Rural's water plant and limiting Carter and Ammons's use of the land in front of the gate, in which they have an easement, to a means of accessing their own property. The trial court's judgment further included findings of facts and conclusions of law. The entry was signed by Judge Morris

on November 16, 2004 and mailed to the Dearborn County Clerk of Courts. Due to an apparent mail delay, the order was not file stamped by the Dearborn County Clerk of Courts or noted in the chronological case summary (“CCS”) until December 1, 2004.

On February 22, 2005, pursuant to Indiana Trial Rule 72(E), Carter and Ammons requested an extension of time to contest the trial court’s findings and conclusions claiming that neither they nor their attorney, Gustin Raikos, received a copy of the trial court’s December 1, 2004 findings, conclusions, and judgment.¹ Carter and Ammons further stated that they did not receive actual knowledge of the trial court’s entry until January 24, 2005. On June 28, 2005, the trial court held an evidentiary hearing related to Carter and Ammons’s request for extension of time, and it denied that request on August 17, 2005. Carter and Ammons appeal.

Analysis

Carter and Ammons contend that neither they nor Raikos received a copy of the findings of fact and conclusions of law filed on December 1, 2004, and argue that the trial court erred by denying their request for an extension of time to contest those findings and conclusions. Our review is limited to the question of whether the trial court abused its discretion in the action taken. M & J Services, Inc. v. VMK, Inc., 561 N.E.2d 827, 829 (Ind. Ct. App. 1990). A trial court abuses its discretion when its decision is “contrary to the logic and effect of the facts and circumstances before the court or the reasonable inferences to be drawn therefrom.” Id. Specifically, Carter and Ammons contend that

¹ We assume that when Carter and Ammons discuss their desire to contest the trial courts findings and conclusions they are referring to either a motion to correct error or a notice of appeal.

the trial court's denial of their request for additional time was an abuse of discretion because they did not have actual knowledge of the trial court's entry.

Indiana Trial Rules 72(D) and 72(E) are pertinent to our review of this case.

Indiana Trial Rule 72(D) provides:

Immediately upon the entry of a ruling upon a motion, an order or judgment, the clerk shall serve a copy of the entry by mail in the manner provided for in Rule 5 upon each party who is not in default for failure to appear and shall make a record of such mailing. Such mailing is sufficient notice for all purposes for which notice of the entry is required by these rules

Indiana Trial Rule 72(E) provides:

Lack of notice, or the lack of the actual receipt of a copy of the entry from the Clerk shall not affect the time within which to contest the ruling, order or judgment, or authorize the Court to relieve a party of the failure to initiate proceedings to contest such ruling, order or judgment, except as provided in this section. When the mailing of a copy of the entry by the Clerk is not evidenced by a note made by the Clerk upon the Chronological Case Summary, the Court, upon application for good cause shown, may grant an extension of any time limitation within which to contest such ruling, order or judgment to any party who was without actual knowledge, or who relied upon incorrect representations by Court personnel. Such extension shall commence when the party first obtained actual knowledge and not exceed the original time limitation.

Carter and Ammons rightly emphasize that these rules affirmatively require the clerk of courts to immediately mail copies of the trial court's entries to the parties and to indicate on the CCS that such mailing has been made. The purpose of these rules is to allow attorneys to rely on the clerk's office to send notice so that they are not required to

continuously check the docket books of each court in which they have cases pending. Markel v. Indiana State Teachers Ass'n, 514 N.E.2d 612, 613-14 (Ind. 1987).

Carter and Ammons further correctly state, and Valley Rural does not argue otherwise, that the trial court's findings and conclusions were not file stamped and entered on the CCS until two weeks after Judge Morris signed them and that the CCS does not appear to include any memorialization by the Dearborn County Clerk of Courts of the mailing of that entry. Despite these seeming deviations from the technical requirements set forth in Indiana Trial Rules 72(D) and 72(E), we conclude that the trial court did not abuse its discretion by denying Carter and Ammons's request for an extension of time.

Other than the fact that the two-week delay in filing Judge Morris's entry may be a departure from the requirements set forth in the Indiana Trial Rules, we do not recognize the practical significance of that lapse in time. Although Judge Morris signed the findings and conclusions on November 16, 2004, that entry was not file stamped or entered on the CCS until December 1, 2004. This delay did not adversely affect Carter and Ammons, however, because it did not lessen the amount of time they had to challenge the entry.

Carter and Ammons's argument that the CCS contains no memorialization of mailing entered by the clerk's office is similarly unconvincing. We regard the identification of this alleged error not as "good cause" for granting an extension as contemplated by Indiana Trial Rule 72(E), but simply as a preliminary obstacle that a party must overcome before the trial court may consider granting such an extension.

Indiana Trial Rule 72(E) provides, in part: “When the mailing of a copy of the entry by the Clerk is not evidenced by a note made by the Clerk upon the Chronological Case Summary, the Court, upon application for good cause shown, may grant an extension of any time” This rule provides an avenue through which a party may challenge the mailing of the notice, but such a challenge may only issue if the CCS is unclear about whether such notice was sent. See Markle, 514 N.E.2d at 614. That challenge will then only succeed if the party is able to show good cause, a determination that is left to the trial court’s discretion.

At the evidentiary hearing on Carter and Ammons’s motion, LuAnne Turner, a court reporter for the Dearborn Circuit Court, testified that she docketed the trial court’s entry on the CCS on December 1, 2004.² Indeed, that CCS entry is followed by her initials “lt.” Appellant’s App. p. 4. Turner explained the docketing procedures and, in discussing the CCS notation “Notice: N,” stated that that entry indicates not that notice was withheld from the parties and Raikos, but that no computer-generated notice of a hearing was sent because no hearing was scheduled as a result of the December 1, 2004 entry. Tr. pp. 16-17.

Turner further testified that one would determine to whom copies of a trial court’s order should be sent by looking at the case’s distribution list, and that, in this case, Raikos’s name was included on that list. Turner stated that she recalled docketing the

² To the extent that Carter and Ammons argue that the trial court abused its discretion because the court reporter, rather than a member of the clerk of courts’s office staff, docketed the December 1, 2004 entry, we find that argument to be an identification of a mere perceived technical error and are not persuaded by it.

December 1, 2004 entry because that was a task she did not usually perform and that she recalled addressing an envelope to Raikos because his name is unique and she remembered typing it. In this same vein, Turner testified that, near the same time she docketed the entry at issue here, Raikos had “maybe . . . a case or two” pending in the court in which Turner works and that she “queried on those and [she] actually didn’t find a whole lot that [she] would have [docketed].” Id. at 21. She then stated, “I mean, now looking back I probably wouldn’t be able to say ‘oh, yeah, I typed it in December,’ but if I head about it say in February, I’m pretty certain I remember typing an envelope for Mr. Raikos.” Id.

Based on Turner’s testimony, we conclude that the trial court did not abuse its discretion by denying Carter and Ammons’s motion. That decision is not contrary to the logic and effect of the facts and circumstances, or the reasonable inferences to be drawn therefrom, presented at the hearing on Carter and Ammons’s request for an extension of time. By denying that request, the trial court concluded that Carter and Ammons had not shown good cause such that an extension of time was warranted. Implicit in that conclusion is the finding that copies of the December 1, 2004 entry were, in fact, mailed to Carter, Ammons, or Raikos.³ We agree that that finding is supported by Turner’s testimony. We find no abuse of discretion here.

Conclusion

³ The trial court’s order denying Carter and Ammons’s request for an extension of time simply states: “The Court, after hearing evidence in this matter, FINDS that the Motion on Trial Rule 72 should be denied.” Appellant’s App. p. 11.

The trial court did not abuse its discretion by denying Carter and Ammons's request for an extension of time. We affirm.

Affirmed.

SULLIVAN, J., and ROBB, J., concur.